

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USDC Docket Number : 05-cv-11897

Massamont Insurance Agency, Inc.,

v.

Utica Mutual Insurance Company

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**CLERK'S CERTIFICATE**

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

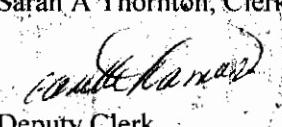
1-35

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 10/13/2006.

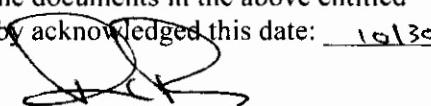
In testimony whereof, I hereunto set my hand and affix the seal of this Court on October 26, 2006.

Sarah A Thornton, Clerk of Court

By:

  
Deputy Clerk

Receipt of the documents in the above entitled  
case is hereby acknowledged this date: 10/30/06

  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

United States District Court  
District of Massachusetts (Boston)  
**CIVIL DOCKET FOR CASE #: 1:05-cv-11897-WGY**

Massamont Insurance Agency, Inc. v. Utica Mutual  
Insurance Company  
Assigned to: Judge William G. Young  
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 09/19/2005  
Jury Demand: Defendant  
Nature of Suit: 110 Insurance  
Jurisdiction: Federal Question

**Plaintiff**

**Massamont Insurance Agency, Inc.**

represented by **John J. Davis**  
Pierce, Davis & Perritano, LLP  
Ten Winthrop Square  
Boston, MA 02110-1257  
617-350-0950  
Fax: 617-350-7760  
Email: jdavis@piercedavis.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Utica Mutual Insurance Company**

represented by **Erin K. Higgins**  
Conn, Kavanaugh, Rosenthal, Peisch &  
Ford, LLP  
Ten Post Office Square  
4th Floor  
Boston, MA 02109  
617-482-8200  
Fax: 617-482-6444  
Email: ehiggins@ckrpf.com  
*ATTORNEY TO BE NOTICED*

**Jacob A Labovitz**  
Conn Kavanaugh Rosenthal Peisch &  
Ford, LLP  
Ten Post Office Square  
Boston, MA 02109  
617-348-8215  
Fax: 617-482-6444  
Email: jlabovitz@ckrpf.com  
*ATTORNEY TO BE NOTICED*

**Mediator**

**Magistrate Judge Judith G. Dein**

TERMINATED: 05/31/2006

Date Filed	#	Docket Text
09/19/2005	•1	COMPLAINT against Utica Mutual Insurance Company Filing fee: \$ 250, receipt number 66992, filed by Massamont Insurance Agency, Inc.. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Civil Cover Sheet)(Bell, Marie) (Entered: 09/21/2005)
09/20/2005	•	Summons Issued as to Utica Mutual Insurance Company. (Bell, Marie) (Entered: 09/21/2005)
09/20/2005	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Bell, Marie) (Entered: 09/21/2005)
10/20/2005	•2	AFFIDAVIT OF SERVICE Executed by Massamont Insurance Agency, Inc.. Utica Mutual Insurance Company served on 10/13/2005, answer due 11/2/2005. Acknowledgement filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 10/20/2005)
11/02/2005	•3	NOTICE of Appearance by Russell F. Conn on behalf of Utica Mutual Insurance Company (Higgins, Erin) Modified on 1/17/2006 (Paine, Matthew). (Entered: 11/02/2005)
11/02/2005	•4	NOTICE of Appearance by Erin K. Higgins on behalf of Utica Mutual Insurance Company (Higgins, Erin) (Entered: 11/02/2005)
11/02/2005	•5	ANSWER to Complaint with Jury Demand by Utica Mutual Insurance Company.(Higgins, Erin) (Entered: 11/02/2005)
11/02/2005	•6	CORPORATE DISCLOSURE STATEMENT by Utica Mutual Insurance Company. (Higgins, Erin) (Entered: 11/02/2005)
11/10/2005	•7	NOTICE of Scheduling Conference Scheduling Conference set for 12/19/2005 02:00 PM in Courtroom 18 before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 11/10/2005)
12/01/2005	•8	MOTION to Bifurcate Plaintiff's Chapter 93A and 176D Claims, and to Stay Discovery Pending Disposition of Plaintiff's Coverage Claims by Utica Mutual Insurance Company. (Attachments: # 1 # 2)(Higgins, Erin) (Entered: 12/01/2005)
12/12/2005	•9	CERTIFICATE OF CONSULTATION Local Rule 16.1 Certification by John J. Davis on behalf of Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 12/12/2005)
12/12/2005	•10	CERTIFICATE OF CONSULTATION Pursuant to L.R. 16.1(D)(3) by Erin K. Higgins on behalf of Utica Mutual Insurance Company. (Higgins, Erin) (Entered: 12/12/2005)
12/12/2005	•11	JOINT STATEMENT re scheduling conference. (Higgins, Erin) (Entered: 12/12/2005)

12/19/2005	•	ElectronicClerk's Notes for proceedings held before Judge William G. Young : Scheduling Conference held on 12/19/2005. The Court explains the requirements of the session and inquires as to whether the parties want to proceed before a Magistrate Judge. Case to go to ADR as of May,06 Final Pretrial Conference set for NO SOONER THAN 11/6/2006 02:00 PM before Chief Judge William G. Young. Jury Trial set for RUNNING TRIAL LIST AS OF 12/4/2006 09:00 AM before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 12/20/2005)
12/20/2005	• 12	Judge William G. Young : ORDER AS MODIFIED entered. re <u>11</u> JOINT STATEMENT re scheduling conference Discovery to be completed by 7/31/2006. Dispositive Motions due by 9/14/2006.(Smith, Bonnie) (Entered: 12/20/2005)
01/04/2006	•	Judge William G. Young : ELECTRONIC ORDER entered Motion 8 Denied. "If the declaratory judgment action requires no discovery, the action is ripe for submission as a case stated." (Paine, Matthew) (Entered: 01/09/2006)
01/17/2006	• 13	NOTICE of Appearance by Jacob A Labovitz on behalf of Utica Mutual Insurance Company (Labovitz, Jacob) (Entered: 01/17/2006)
04/19/2006	• 14	REFERRING CASE to Alternative Dispute Resolution.(Paine, Matthew) (Entered: 04/19/2006)
04/21/2006	•	Electronic Notice of assignment to ADR Provider. Magistrate Judge Judith G. Dein appointed. The Court will contact counsel with regard to scheduling.(Tyler, Rebecca) (Entered: 04/21/2006)
04/25/2006	• 15	NOTICE of and ORDER regarding ADR Conference: Mediation set for 5/31/2006 10:00 AM in Courtroom 15 before Magistrate Judge Judith G. Dein.(Dambrosio, Jolyne) (Entered: 04/25/2006)
05/05/2006	• 16	MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	• 17	MEMORANDUM in Support re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	• 18	Statement of Material Facts L.R. 56.1 re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/05/2006)
05/05/2006	• 19	AFFIDAVIT in Support re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc.. (Attachments: # (1) Affidavit Part 2 of Affidavit of Hilbert Schenck II)(Davis, John) Additional attachment(s) added on 5/10/2006 (Paine, Matthew). (Entered: 05/05/2006)
05/08/2006	• 20	MOTION for Summary Judgment by Utica Mutual Insurance Company.

		(Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	•21	MEMORANDUM in Support re <u>20</u> MOTION for Summary Judgment filed by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	•22	APPENDIX/EXHIBIT re <u>20</u> MOTION for Summary Judgment, <u>21</u> Memorandum in Support of Motion ( <i>Table of Authorities</i> ) by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/08/2006)
05/08/2006	•23	STATEMENT of facts re <u>20</u> MOTION for Summary Judgment <i>Filed by Utica Mutual Insurance Company.</i> (Attachments: # <u>1</u> Affidavit Jacob A. Labovitz (With Attached Exhibits - I)# <u>2</u> Affidavit Jacob A. Labovitz (With Attached Exhibits - II))(Labovitz, Jacob) (Entered: 05/08/2006)
05/10/2006	•	Notice of Correction to Docket made by Court Staff. Correction: <u>19</u> AFFIDAVIT in Support re <u>16</u> MOTION for Partial Summary Judgment Corrected Because: The Exhibits to the Affidavit of Hilbert Schenck II Were Not Filed As Separate PDF Attachments to the Affidavit. (Paine, Matthew) (Entered: 05/10/2006)
05/19/2006	•	NOTICE re Opposition to <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Pursuant to Local Rule 7.1(D), 20</i> Opposition to MOTION for Summary Judgment. The defendant's Oppositon is due by May 26, 2006 and the Plaintiff;s Opposition is due by May 30, 2006. (Smith, Bonnie) (Entered: 05/19/2006)
05/26/2006	•24	MEMORANDUM in Opposition re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Pursuant to Local Rule 7.1(D)</i> filed by Utica Mutual Insurance Company. (Labovitz, Jacob) (Entered: 05/26/2006)
05/26/2006	•25	Response by Utica Mutual Insurance Company to <u>18</u> Statement of Material Facts L.R. 56.1 of <i>Massamont Insurance Agency, Inc.</i> (Labovitz, Jacob) (Entered: 05/26/2006)
05/30/2006	•26	MEMORANDUM in Opposition re <u>20</u> MOTION for Summary Judgment <i>of Utica Mutual Insurance Company</i> filed by Massamont Insurance Agency, Inc.. (Attachments: # <u>1</u> Attachment 1 - Objections and Responses of Defendant Utica Mutual Ins. Co# <u>2</u> Attachment 2 - Plaintiff's Answers to Defendant's 1st Set of Interrogatories)(Davis, John) (Entered: 05/30/2006)
05/30/2006	•27	Opposition re <u>20</u> MOTION for Summary Judgment <i>Utica Mutual Insurance Company's Statement of Undisputed Facts</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 05/30/2006)
05/31/2006	•28	REPORT of Alternative Dispute Resolution Provider. (Dambrosio, Jolyne) (Entered: 05/31/2006)
06/13/2006	•29	Emergency MOTION for Protective Order by Utica Mutual Insurance Company. (Attachments: # <u>1</u> Exhibit Scheduling Order)(Labovitz, Jacob) (Entered: 06/13/2006)

06/14/2006	• 30	Opposition re <u>29</u> Emergency MOTION for Protective Order <i>Or, In the Alternative, Request for Leave to Extend Discovery Deadlines -- and Request for Oral Argument</i> filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 06/14/2006)
06/14/2006	•	ELECTRONIC NOTICE of Hearing on Motion <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D), 20</i> MOTION for Summary Judgment: Motion Hearing set for 6/29/2006 02:00 PM in Courtroom 18 before Judge William G. Young. (Smith, Bonnie) (Entered: 06/14/2006)
06/14/2006	•	Judge William G. Young : Electronic ORDER entered GRANTING <u>29</u> Motion for Protective Order by Utica Mutual Insurance Company. (Paine, Matthew) (Entered: 06/14/2006)
06/15/2006	• 31	Emergency MOTION for Extension of Time to Complete Discovery by Massamont Insurance Agency, Inc..(Davis, John) (Entered: 06/15/2006)
06/15/2006	• 32	MEMORANDUM in Support re <u>31</u> Emergency MOTION for Extension of Time to Complete Discovery filed by Massamont Insurance Agency, Inc.. (Davis, John) (Entered: 06/15/2006)
06/19/2006	• 33	MEMORANDUM in Opposition re <u>31</u> Emergency MOTION for Extension of Time to Complete Discovery filed by Utica Mutual Insurance Company. (Attachments: # 1 Exhibit)(Labovitz, Jacob) (Entered: 06/19/2006)
06/20/2006	•	Judge William G. Young : Electronic ORDER entered DENYING <u>31</u> Emergency Motion for Extension of Time to Complete Discovery. (Paine, Matthew) (Entered: 06/20/2006)
06/29/2006	•	ElectronicClerk's Notes for proceedings held before Judge William G. Young : Motion Hearing held on 7/3/2006 re <u>16</u> MOTION for Partial Summary Judgment <i>and Request for Oral Argument Prusuant to Local Rule 7.1(D)</i> filed by Massamont Insurance Agency, Inc., <u>20</u> MOTION for Summary Judgment filed by Utica Mutual Insurance Company,. After hearing the Motions are taken UNDER ADVISEMENT (Court Reporter Womack.) (Entered: 07/03/2006)
09/15/2006	• 34	Judge William G. Young : ORDER entered. "Because Massamont's Breach Did Not Arise in the Performance or Nonperformance of a 'Professional Service', the Court Need Not Address Whether Massamont's Breach Constituted a 'Wrongful Act' Under the Policy. Accordingly, Utica's Motion for Summary Judgment Doc. No. <u>20</u> is hereby ALLOWED; massamont's Motion for Summary Judgment Doc. No. <u>16</u> is hereby DENIED. Judgment for Utica Shall Enter. (Paine, Matthew) (Entered: 09/15/2006)
09/15/2006	•	Judge William G. Young : Electronic ORDER entered. JUDGMENT in favor of Utica. (Paine, Matthew) (Entered: 09/15/2006)
10/13/2006	• 35	NOTICE OF APPEAL as to <u>34</u> Order,, Judgment by Massamont Insurance Agency, Inc.. \$ 455 NOTICE TO COUNSEL: A Transcript

Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <http://www.ca1.uscourts.gov/clerks/transcript.htm> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 11/2/2006. (Davis, John) (Entered: 10/13/2006)